

percentage of assets to be held or acquired for purposes of section 7A(a)(3)(A).

Example: In the example to paragraph (a), for purposes of calculating the percentage of assets to be held, the “acquired person” is “A.”

(d) *Percentage of assets.* Whenever the act or these rules require calculation of the percentage of assets of a person to be held or acquired, the percentage shall be the ratio, expressed as a percentage, which—

(1) The book value (on the books of the acquired person) of the assets to be acquired (see § 801.13(b)(1)), bears to

(2) The total assets of the acquired person, determined in accordance with § 801.11.

Example: In the example to paragraph (a), the percentage of assets to be acquired by “B” is determined by dividing the book value of A2’s assets being acquired, by the total assets of “A,” determined in accordance with § 801.11.

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§ 801.13 Voting securities or assets to be held as a result of acquisition.

(a) *Voting securities.* (1) Subject to the provisions of § 801.15, and paragraph (a)(3) of this section, all voting securities of the issuer which will be held by the acquiring person after the consummation of an acquisition shall be deemed voting securities held as a result of the acquisition. The value of such voting securities shall be the sum of the value of the voting securities to be acquired, determined in accordance with § 801.10(a), and the value of the voting securities held by the acquiring person prior to the acquisition, determined in accordance with paragraph (a)(2) of this section.

(2) The value of voting securities of an issuer held prior to an acquisition shall be—

(i) If the security is traded on a national securities exchange or is authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission, the market price calculated in accordance with § 801.10(c)(1); or

(ii) If paragraph (a)(2)(i) of this section is not applicable, the fair market value determined in accordance with § 801.10(c)(3).

Examples: 1. Assume that acquiring person “A” holds \$19 million of the voting securities of X, and is to acquire another \$1 million of the same voting securities. Since under paragraph (a) of this rule all voting securities “A” will hold after the acquisition are held “as a result of” the acquisition, “A” will hold \$20 million of the voting securities of X as a result of the acquisition. “A” must therefore observe the requirements of the act before making the acquisition, unless the present acquisition is exempt under section 7A(c), § 802.21 or any other rule.

2. See § 801.15 and the examples to that rule.

3. See § 801.20 and the examples to that rule.

4. On January 1, Company A acquired \$30 million of voting securities of Company B. “A” and “B” filed notification and observed the waiting period for that acquisition.

Company A plans to acquire \$1 million of assets from company B on May 1 of the same year. Under § 801.13(a)(3), “A” and “B” do not aggregate the value of the earlier acquired voting securities to determine whether the acquisition is subject to the act. Therefore, the value of the acquisition is \$1 million and it is not reportable.

(3) Voting securities held by the acquiring person prior to an acquisition shall not be deemed voting securities held as a result of that subsequent acquisition if:

(i) The acquiring person is, in the subsequent acquisition, acquiring only assets; and

(ii) The acquisition of the previously acquired voting securities was subject to the filing and waiting requirements of the act (and such requirements were observed) or was exempt pursuant to § 802.21.

(b) *Assets.* (1) All assets to be acquired from the acquired person shall be assets held as a result of the acquisition. The value of such assets shall be determined in accordance with § 801.10(b).

(2)(i) If the acquiring person has signed a letter of intent or entered into a contract or agreement in principle to acquire assets from the acquired person, and

(ii) Subject to the provisions of § 801.15, if the acquiring person has acquired from the acquired person within the 180 calendar days preceding the signing of such agreement any assets

which are presently held by the acquiring person, and the acquisition of which was not previously subject to the requirements of the act or the acquisition of which was subject to the requirements of the act but they were not observed, then only for purposes of section 7A(a)(3)(B) and § 801.1(h)(1), both the acquiring and the acquired persons shall treat such assets as though they had not previously been acquired and are being acquired as part of the present acquisition. The value of any assets previously acquired which are subject to this paragraph shall be determined in accordance with § 801.10(b) as of the time of their prior acquisition.

Example: Acquiring person "A" proposes to make two acquisitions of assets from acquired person "B," 90 days apart, and wishes to determine whether notification is necessary prior to the second acquisition. For purposes of the percentage test of section 7A(a)(3)(A), "A" would hold only the assets it acquired in the second acquisition. For purposes of the \$15 million test of section 7A(a)(3)(B), however, "A" must aggregate both of its acquisitions and must value each as of the time of its occurrence.

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§ 801.14 Aggregate total amount of voting securities and assets.

For purposes of section 7A(a)(3)(B) and § 801.1(h)(1), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(a); and

(b) The value of all assets of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(b).

Examples: 1. Acquiring person "A" previously acquired \$6 million of the voting securities (not convertible voting securities) of corporation X. "A" now intends to acquire \$8 million of X's assets. Under paragraph (a) of this section, "A" looks to § 801.13(a) and determines that the voting securities are to be held "as a result of" the acquisition. Section 801.13(a) also provides that "A" must determine the present value of the previously acquired securities. Under paragraph (b) of this section, "A" looks to § 801.13(b)(1) and determines that the assets to be acquired will be

held "as a result of" the acquisition, and are valued under § 801.10(b) at \$8 million. Therefore, if the voting securities have a present value of more than \$7 million, the asset acquisition is subject to the requirements of the act since, as a result of it, "A" would hold an aggregate total amount of the voting securities and assets of "X" in excess of \$15 million.

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. "A" now looks to § 801.13(b)(2) and determines that because the second acquisition is of voting securities and not assets, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act by reason of section 7A(a)(3)(B) since the value of the securities to be acquired does not equal or exceed \$15 million.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of section 7A(a)(3) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ 802.3, 802.4, 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of